IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

WP(C).No. 36410 of 2007(S)

OA.349/2006 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH

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PETITIONERS:

1. THE ADMINISTRATION OF UT OF LAKSHADWEEP,
   REP. BY THE HON'BLE SECRETARY (FISHERIES),
   KAVARATTI.

2. THE DIRECTOR, DEPARTMENT OF FISHERIES,
   UT OF LAKSHADWEEP, KAVARATTI.

BY ADV. SRI.SHAFIK M.ABDULKHADIR,SC,LAKSHADWEEP

RESPONDENTS:

1. MOHAMMED KASIM, FISHERIES INSPECTOR,
   DEPARTMENT OF FISHERIES, AGATTI, LAKSHADWEEP.

2. JAFFER HISHAM T.P., THATTAMPOKADA,
   ANDROTH ISLAND, LAKSHADWEEP.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

W.P.(C)No. 36410 of 2007 S

JUDGMENT

Balakrishnan Nair, J.

The petitioners were the respondents and the first respondent herein was the applicant in O.A. No.349/06 before the Central Administrative Tribunal, Ernakulam Bench. The third respondent in that original application is the second respondent herein.

2. The original application was filed by the first respondent challenging the selection and appointment of the second respondent herein as Fisheries Officer. The qualifications prescribed for the post of Fisheries Officer is Diploma in Fisheries Science of the CIFE Bombay or Graduation in Fisheries or Graduation in Science with Zoology as the main subject with two years experience in Fisheries field. The first respondent attacked the

selection of the second respondent on the ground that he does not have the requisite experience of two years, as prescribed in the Recruitment Rules. Other contentions were also raised against the selection. The petitioners herein filed a reply statement supporting the selection. The second respondent also supported his selection. The files were called for and perused by the Tribunal. After hearing both sides, the Tribunal set aside the selection and appointment of the second respondent herein and issued certain directions to the petitioners herein as to how the selection should be made. Directions were also issued to hold an eqnuiry as to how the second respondent, who was not a qualified person, happened to be included in the short list of candidates, who should be subjected to selection. The original application was allowed with costs also. The petitioners, feeling aggrieved by the said directions, have filed this writ petition.

3. The main point that arises for decision in this case is whether the second respondent is having the requisite experience qualification as per the Recruitment Rules or not. The learned counsel for the petitioners brought to our notice that the second respondent is having experience in fisheries from April 1995 to June 1997. This experience is claimed based on Exhibit P4(11) certificate dated 26.2.2005, available at Page 46 of the paper book.The certificate reads as follows:

"TO WHOM IT MAY CONCERN

> This is to certify that Jafer Hisham.T., S/o Dr.Koyammakoya.M. has participated in fishing on my fishing boat named Diamond during the period for two years from April 1995 to June 1997. He is hard working, his character and conduct are good.
>
> I wish him all success.
>
> Androth
> 26.02.2005 M.M.MOHAMMED KASIM".

(emphasis supplied)

The learned counsel also pointed out that the second respondent herein has got experience in fishing from 2.12.2004 to 30.5.2005. In support of that contention, Exhibit P4(12) certificate dated 10.4.2005, available at page 47 of the paper book is relied on. The said certificate reads as follows:

> " CERTIFICATE
>
> Certified that Sri.Jafer Hisham.T., S/o Koyammakoya.M., is having four months fishing experience in 25 ft. boat ABABEEL from 02.12.2004 to 30.03.2005.
>
> (Kunhikoya,Kolikat Neduvilakam)
> Ababeel Boat Owner
> Androth
> 10.04.2005."

Apart from the above, he has worked in Bombay Natural History Society as a Research Fellow from 1st April, 2005 to 30th September, 2005 as per Exhibit P4(14), available at page 49 of the paper book. He has also worked there from 1.10.2005 to

30.9.2006 as per Exhibit P4(13), available at page 48 of the paper book. The experience in fisheries mentioned above was relied on by the writ petitioners to support the selection of the second respondent.

4. In this case, the applications were invited as per the notification published on 16.2.2006. The written test was conducted on 12.5.2006. So, the experience up to February 2006 alone could be counted. If that be so, the experience as per Exhibits P4(13) and P4(14) can be counted only from April 2005 up to February 2006.

5. The Tribunal ignored the experience gained from April 1995 to June 1997 for the reason that at the relevant time, the second respondent was aged 14-16. He was a minor student at the relevant time and therefore, the said experience was held to be not reckonable by the Tribunal. If that period is excluded, the remaining period will not make up two years experience before the last date of

receipt of the applications.

6. As mentioned earlier, the main point to be decided in this writ petition is whether the decision of the Tribunal that the second respondent does not have the requisite experience is sustainable or not. Admittedly, between 1995 and 1997, the second respondent was a student. He was also a minor at the relevant time. So, he will be, even assuming the claim of experience is correct, ”participating” in fishing on part time basis. Admittedly, the experience was gained before the acquisition of the basic degree qualification. Normally, the experience gained from a part time job and that too acquired before the acquisition of the basic qualification cannot be reckoned as a qualification prescribed as per the Recruitment Rules. When experience qualification is prescribed, normally, it should be experience gained after the acquisition of the prescribed academic qualification and that too from a full time job.

So, the view taken by the Tribunal on the experience of the second respondent is certainly a plausible view on the facts of the case, with which, this Court cannot interfere under Article 227 of the Constitution of India. If the said experience is excluded, the remaining experience will come to 4 + 11 = 15 months only, which is not sufficient. We fully agree with the reasons and conclusions of the Tribunal on this point. The Tribunal was concerned with the way in which an inexperienced candidate happened to be short listed in the selection process and it went unnoticed at all the stages of selection. Therefore, certain directions, in its discretion, were issued by the Tribunal. Those directions come well within the jurisdiction of the Tribunal. They cannot be described as perverse or arbitrary. Therefore, it is not proper for this Court to interfere with such directions while exercising our jurisdiction under Article 227 of the Constitution of India.

In the result, the writ petition fails and it is dismissed.

(K.Balakrishnan Nair, Judge)

13th December, 2007

(K.P.Balachandran, Judge)

tkv